

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

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|---------------------------|---|--------------------------------------|
| ARMANDO MOYA, | § | |
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| Petitioner, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. 5:22-CV-106-RWS-JBB |
| | § | |
| UNITED STATES OF AMERICA, | § | |
| | § | |
| Respondent. | § | |

ORDER

Petitioner Armando Moya, proceeding *pro se*, filed this motion to vacate, set aside, or correct his federal sentence pursuant to 28 U.S.C. § 2255. Docket No. 1. The case was referred to United States Magistrate Judge J. Boone Baxter in accordance with 28 U.S.C. § 636.

On January 23, 2025, the Magistrate Judge issued a Report and Recommendation recommending the motion be denied. Docket No. 8 at 21. The Magistrate Judge concluded that Petitioner's claims for § 2255 relief are without merit. *Id.* at 20. Additionally, the Magistrate Judge concluded that Petitioner is not entitled to a certificate of appealability because Petitioner has not made a substantial showing of a denial of a constitutional right. *Id.*

Petitioner received a copy of this Report on February 4, 2025, but filed no objections. *See* Docket No. 9. Because no objections have been received, Petitioner is barred from *de novo* review by the District Judge of the Magistrate Judge's proposed findings, conclusions, and recommendations. Moreover, except upon grounds of plain error, an aggrieved party is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *See Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017);

Arriaga v. Laxminarayan, Case No. 4:21-CV-00203-RAS, 2021 WL 3287683, at *1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this case and the Report and Recommendation of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a magistrate judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

The Court also concludes that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *see also Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, Petitioner has not shown that any of the issues would be subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed

further. Petitioner has, therefore, failed to make a sufficient showing to merit the issuance of certificate of appealability, and a certificate of appealability will not be issued. Accordingly, it is

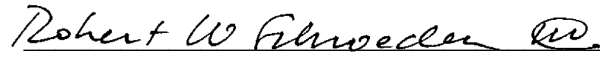
ORDERED that the Report and Recommendation of the Magistrate Judge (Docket No. 8) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Motion to Vacate, Set Aside or Correct the Petitioner's Sentence (Docket No. 1) is **DENIED**. It is further

ORDERED that the above-titled cause of action is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that a certificate of appealability is **DENIED**.

So ORDERED and SIGNED this 26th day of March, 2025.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE